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UNITED STATES TAX COURT
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UNITED STATES TAX COURT
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DEPUTY CLERK

JOEL ROUSSEAU,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 31829-15 L

Petition for Lien or Levy Action Under Code Section 6320 (c) or 6330 (d)

PETITION

Petitioner hereby petitions the Court for review of the Notice of Determination Concerning Collection Action under Section 6320 and/or 6330 of the Internal Revenue Code ("Notice"), and as the basis for his case alleges:

1. Petitioner is an individual residing in Miami, Florida.
2. The Notice (a copy of which, including so much of the statement and schedules accompanying the notice as is material, redacted as provided by Rule 27, is attached and marked as Exhibit A) was issued on November 18, 2015, by the Plantation, Florida, Office of Internal Revenue Service. This petition is timely filed under I.R.C. section 6330(d) within 30 days of the Notice date.
3. The underlying liability for tax year 2013 for tax, penalties and interest is approximately \$630,000 for income taxes, penalties and interest.
4. The determinations in the Notice are based upon errors made by respondent's appeals officer, who abused her discretion by failing to approve two proposed

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installment agreements that would full pay petitioner's liability in three years. Specifically, respondent's appeals officer abused her discretion:

a. By failing to approve an installment agreement proposed by petitioner for \$20,000 per month, as stated in the Notice, which would full pay the liability at issue in three years or less.

b. By failing to approve a second installment agreement proposed by petitioner for a lump-sum payment of \$250,000 and \$10,000 per month, which would full pay the liability at issue in three years.

c. By erroneously determining in the Notice that petitioner was not in deposit compliance for the 2014 tax year when she knew that (1) petitioner made a \$10,000 estimated tax deposit with his timely filed 2014 automatic extension to file his return by October 15, 2015, and (2) admitted in the Notice that petitioner's 2014 return showed no tax due; therefore no tax deposits were required.

d. By erroneously determining that petitioner was not in tax deposit compliance for 2015 when (1) the appeals officer admitted in the Notice that petitioner's 2014 tax return showed no taxable income, and (2) the appeals officer was aware petitioner made a \$10,000 estimated tax deposit for tax year 2015.

e. By arbitrarily refusing, while in the middle of a telephone conference, to accept any additional documentation from petitioner to explain the appeals officer's perceived "inconsistencies" in petitioner's documentation.

5. The facts upon which petitioner relies as the basis of his case are:

a. Petitioner proposed an installment agreement to respondent for \$20,000 per month, as stated in the Notice, which would full pay the liability at issue in three years or less.

b. Petitioner proposed a second installment agreement to respondent for a lump-sum payment of \$250,000 and \$10,000 per month, as stated in the Notice, which would full pay the liability at issue in three years.

c. Petitioner's representative presented documentation to settlement officer, and began a series of telephone conferences and correspondences with the appeals officer in good-faith, to propose an installment agreement to full pay petitioner's 2013 liability.

d. The appeals officer was informed that petitioner is an entrepreneur; as such, he receives no regular paycheck. His finances do not follow the typical pattern of a wage earner.

e. Petitioner's representative offered to work with the settlement officer, and requested additional time to provide additional materials that would fully analyze petitioner's income and expenses within a reasonable timeframe.

f. During the CDP hearing process, petitioner was in full compliance with all filing and deposit requirements, including filing tax returns for tax years 2005, 2007 and 2009, as requested by the appeals officer.

g. On October 19, 2015, the taxpayer made an estimated tax deposit of \$10,000 for the 2015 tax year. There was no requirement of estimated tax deposits greater than the \$10,000 deposited because the taxpayer reported a loss for tax year 2014. The

Settlement Officer, however, insisted that the taxpayer was noncompliant in terms of his tax deposits.

h. During the appeals officer's final telephone conference with petitioner's representative, the appeals officer suddenly indicated that she would accept no additional documentation from the petitioner. The taxpayer's representative again offered to provide the information requested by the Settlement Officer within 10 days' time. The Settlement Officer definitively indicated that she would accept no additional documentation. Rather, she would issue a notice of determination denying collection alternatives to the taxpayer because the taxpayer's finances were too "messy" and were taking "too much time."

WHEREFORE, Petitioners pray as follows:

1. That the Court determine that respondent abused his discretion.
2. That the Court determine that the proposed collection action is inappropriate, and remand to the Internal Revenue Service for an appropriate consideration of a collection alternative; and
3. That the Court grant such other and further relief as just and proper.

Date: 12-16-15



JOEL ROUSSEAU

Petitioner
1881 Washington Ave. #2G
Miami, FL 33139
Address Used By Court
(310) 550-6200



**Department of the Treasury
Internal Revenue Service**

Appeals Office

Royal Palm One, Suite 350
1000 South Pine Island Road
Plantation, FL 33324

JOEL ROUSSEAU
1881 WASHINGTON AVENUE #2G
MIAMI, FL 33139-

Date:

NOV 18 2015

Person to contact:

Name: Janet Wade

Employee number: 2838106

Telephone: 954-423-7910

Fax: 855-272-1108

Re:

Collection Due Process Hearing
(Tax Court)

Taxpayer ID number:

Tax period(s) ended:

12/2013

CERTIFIED MAIL **7014 3490 0000 8861 1558**

NOTICE OF DETERMINATION

Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code

Dear Mr. Rousseau:

We reviewed the completed or proposed collection actions for the tax period(s) shown above. This letter is your Notice of Determination, as required by law. We attached a summary of our determination below. The attached summary shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter. To obtain a petition form and the rules for filing a petition, write to:

Clerk, United States Tax Court
400 Second Street NW
Washington, DC 20217

You can also visit the Tax Court website at www.ustaxcourt.gov.

The United States Tax Court also has a simplified procedure for an appeal of a collection action if the total unpaid tax (including interest and penalties) for all periods doesn't exceed \$50,000. You can obtain information about this simplified procedure by writing to the Tax Court or visiting their web site as shown above.

The law limits the time for filing your petition to the 30-day period mentioned above. The courts cannot consider your case if you file late. If you file an appeal in an incorrect court (e.g., United States District Court), you won't be able to refile in the United States Tax Court if the period for filing a petition expired.

If you don't petition the court within the period provided by law, we'll return your case to the originating IRS office for action consistent with the determination summarized below and described on the attached pages. If you have questions, please contact the person at the telephone number shown above.

EXHIBIT A

Letter 3193 (Rev. 11-2013)
Catalog Number 27215L

Summary of Determination

The Notice of Levy was issued properly and the proposed levy action is sustained by Appeals. The documents you provided were incomplete and did not substantiate your request for an installment agreement. You did not submit Form 656 for consideration of your request for an Offer in Compromise. Therefore, an alternative to collection could not be considered.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Rhonda R. Warren". The signature is written in a cursive, flowing style.

Rhonda R Warren
Appeals Team Manager

Enclosures:
Attachment

cc: Scott Burkholder Esq

Attachment

JOEL ROUSSEAU

Type of Tax(es)	Tax Period(s)	Date of CDP Notice	Type of hearing	Date used to determine timeliness
Income Tax	201312	03/13/2015	6330	04/08/2015

SUMMARY AND RECOMMENDATION

A timely CDP request was received by Compliance in response to the issuance Letter 1058 (final notice of intent to levy). The action taken by Compliance was found to be appropriate and has been sustained. The Collection alternatives requested could not be considered because of the discrepancies concerning income, expenses and estimated tax for 2014 and 2015.

BRIEF BACKGROUND

You submitted a Collection Due Process (CDP) request Form 12153 in response to the issuance of a Notice of Intent to Levy for the income tax period listed above. The Notice of Intent to Levy and Your Right to a Hearing Under IRC 6330 (Letter 1058) was issued by Revenue Officer Eric Base, of Miami, FL, on March 13, 2015. CDP request was received by the proper office on April 08, 2015, within the required 30 days of the Notice issued for the Form 1040 period 12/2013 and within the timeframe specified by Letter 1058. The CDP request was timely for the Form 1040 return balance.

Appeals Officer Ms. Wade was assigned the CDP request and issued a substantive contact letter dated August 17, 2015 scheduling a telephone conference with the option of a face to face conference on September 24, 2015 at 2:00 PM ET. Ms. Wade included with her contact letter a list of financial documents necessary to include a Form 433-A (Collection Information Statement for Individuals), a request for a completed Form 433-B (Collection Information Statement for the business you own) and substantiation of the financial statements. We asked that you complete and return the requested financial documents within 14 days from the date of the letter. We also requested that you file delinquent Form 1040 returns for the calendar years 12/2005, 12/2007 and 12/2009 along with proof of any estimated tax (ES) payments for the current tax year 2015. Compliance had requested that you file these returns prior to you filing a CDP. Your tax liability for 2013 was over \$800,000 and there was a \$10,000 ES payments made by you in 2014 and no ES payments in 2015. We asked that you provided proof of ES payments made.

During our scheduled conference on September 24, 2015 we confirmed that you had not filed the delinquent returns for the tax years 2005, 2007 and 2009. Your representative requested an additional two weeks to bring you into compliance. You did not provide any of the other requested documents we listed on the Substantive Contact Letter as well. You were requesting an installment agreement. We could not postpone or reschedule the conference because none of the requested documents were received. We could not consider your request for an installment agreement and there was no Form 656 received for consideration of your OIC request.

On October 8, 2015 we received an email from your representative containing the delinquent Form 1040 returns for the tax years 12/2005 12/2007 and 12/2009. You Adjusted Gross Income (AGI) in 2005 was \$6,688, for 12/2007 AGI \$10,657 and in 2009 your AGI

was AGI of \$530 for the tax year.

There were no ES tax payments received for the tax year 2015 and based on \$800,000 in taxes due for 2013, the ES payment of \$10,000 in 2014 was less than 2013 tax due by \$790,000. Based on the 2013 tax year a greater amount for ES payments would have been due in 2014 and 2015. There was no accounting for the difference between the 2013 and your ES payment shortage in the 2014 and 2015 tax years.

On October 15 2015 we received additional correspondence containing a request for an installment agreement for \$20,000 per month, an unsigned Form 433-A indicating income of \$12,500 per month and bank statements indicating deposits of a greater amount. In one month there are \$40,000 deposited and another month there was \$18,000. You had savings of \$410,000. Your Form 433-A also indicted that you were making monthly ES payments in the amount of \$3750 per month which we have no record of for either the 2014 or 2015 tax year. There was no explanation for the discrepancies. We could not consider your request for an installment agreement in the amount of \$20,000 per month because your financial statement did not support your request.

On October 23, 2015 we received another letter from your representative restating your request. He stated that you were now asking Appeals to consider an installment agreement in the amount of \$10,000 per month and \$250,000 down out of your savings account which now had a balance of \$366,000. Though this is a considerate amount of money to apply to you liability for 2013, we could not consider your request because of the inconsistencies concerning your unsigned financial statement which does not support your request. Also, we did not receive any supporting documents as requested and necessary in order to substantiate you Form 433-A and there was no Form 433-B (Collection Information Statement for Business) submitted.

Your representative stated that he would send additional information concerning the LLC partnership business you own 97% of which owns the condominium you reside in, which revealed during the follow up to the conference, however; we had provided you the opportunity to present this information and have not received the requested documents of the Form 433-B for the business.

You filed a Form 1040 for 2014 on October 15, 2015 timely and indicated no tax due and your \$10,000 ES payment was refunded and applied to the 2013 tax year the balance of which is currently \$682,000.

We could not consider your request for an installment agreement.

LEGAL AND ADMINISTRATIVE REVIEW

I, Janet Wade, verified the requirements of any applicable law or administrative procedure were met. IRS records confirmed the proper issuance of the notice and demand, Notice of Intent to Levy and/or Notice of Federal Tax Lien (NFTL) filing, and notice of a right to a Collection Due Process (CDP) hearing.

An assessment was properly made for each tax and period listed on the CDP notice.

Notice and demand for payment was mailed to your last known address.

There was a balance due when the Notice of Intent to Levy was issued or when the NFTL

filing was requested.

I had no prior involvement with respect to the specific tax periods either in Appeals or Compliance.

I reviewed the Collection file, IRS records and information you provided. My review confirmed that the IRS followed all legal and procedural requirements, and the actions taken or proposed were appropriate under the circumstances.

b. ISSUES YOU RAISED

Collection Alternatives Requested

You offered an alternative to collection of an installment agreement and an Offer in Compromise. We did not receive the Form 656 for an Offer and therefore we could not consider this alternative. We could not agree to grant you an agreement because of the lack of information and inconsistencies concerning you the financial information you did provided. We provided you with a second opportunity to explain the inconsistencies and the responses were not clear. Therefore, we could not consider your requests.

Challenges to the Liability

You did not dispute your liability.

You raised no other issues.

c. BALANCING ANALYSIS

The proposed notice of levy is sustained. The requirements of applicable law or administrative procedures have been met and the actions taken were appropriate under the circumstances. The Settlement Officer had no prior involvement with the liabilities under review.

A viable collection alternative could not be determined as substantiation of your request was not submitted. As a result you have failed to show that the issuance of the Notice was overly intrusive or that a better collection alternative is available; and therefore, the issuance of the Notice balanced the efficient collection of the taxes with a concern that the collection action be no more intrusive than necessary

HOLTZ, SLAVETT & DRABKIN
A PROFESSIONAL LAW CORPORATION
315 S. BEVERLY DRIVE
SUITE 515
BEVERLY HILLS, CA 90212



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